Supreme Court of the United States.

No. 395.—October Term, 1906.

Thomas M. Fields, Plaintiff in Error, *vs.* The United States. } In error to the Court of Appeals of the District of Columbia.

[April 8, 1907.]

Thomas M. Fields was indicted in the Supreme Court of the District of Columbia at the January term, 1905, for embezzlement. Of eight counts in the indictment seven were disposed of by demurrer or by verdict in favor of the defendant. The trial begun on May 8, and, ending May 15, 1905, resulted in a verdict of guilty under the third count. Motions in arrest of judgment and for a new trial having been overruled, he was sentenced to imprisonment and labor in the penitentiary for five years. The Court of Appeals of the District modified the judgment of the Supreme Court by striking out the order for "labor," and, as so modified, affirmed it. 27 App. D. C. 433. The case was brought to this court on writ of error. A motion to dismiss and a petition for certiorari were presented by the respective parties, the consideration of both of which was postponed to the hearing on the merits. The indictment was found under section 841 of the District Code, which is as follows:

"Any executor, administrator, guardian, trustee, receiver, collector, or other officer into whose possession money, securities, or other property of the property or estate of any other person may come by virtue of his office or employment, who shall fraudulently convert or appropriate the same to his own use, shall forfeit all right or claim to any commissions, costs, and charges thereon, and shall be deemed guilty of embezzlement of the entire amount or value of the money or other property so coming into his possession and converted or appropriated to his own use, and shall be punished by a fine not exceeding one thousand dollars, or by imprisonment not exceeding ten years, or both."

The statute under which the writ of error was sued out is section 233 of the District Code, which reads:

"Sec. 233. Any final judgment or decree of the Court of Appeals may be re-examined and affirmed, reversed, or modified by the Supreme Court of the United States, upon writ of error or appeal, in all cases in which the matter in dispute, exclusive of costs, shall exceed the sum of five thousand dollars, in the same manner and under the same regulations as existed in cases of writs of error on judgments or appeals from decrees rendered in the Supreme Court of the District of Columbia on February

ninth, eighteen hundred and ninety-three, and also in cases, without regard to the sum or value of the matter in dispute, wherein is involved the validity of any patent or copyright, or in which is drawn in question the validity of a treaty or statute of, or an authority exercised under, the United States."

Mr. Justice BREWER delivered the opinion of the Court.

The petition for a certiorari must be first considered. A certiorari can be issued only when a writ of error cannot. 26 Stat. 828, sec. 6, last two paragraphs. There have been two or three instances in which, after a writ of error has been allowed, an application for a certiorari has been filed, the latter because of doubt whether the former would lie. It must not be supposed that because we have before us both a writ of error and an application for certiorari that the rules laid down by this court governing the latter applications are to be ignored, and the case held in this court by either the writ of error or the certiorari.

In this case there is no sufficient ground for a certiorari. The application comes within none of the conditions therefor declared in the decisions of this court. However important the case may be to the applicant, the question involved is not one of gravity and general importance. There is no conflict between the decisions of State and Federal courts or between those of Federal courts of different circuits. There is nothing affecting the relations of this nation to foreign nations, and indeed no matter of general interest to the public.

Will a writ of error lie? Is the case one of which this court has jurisdiction? It is settled that a criminal case, as such, cannot be brought here on writ of error from the Court of Appeals of the District. *Chapman* v. *United States*, 164 U. S. 436, and cases cited in the opinion; *Sinclair* v. *District of Columbia*, 192 U. S. 16.

The authority of these cases is not questioned, but it is contended that the forfeiture of all right or claim to any commissions, etc., was determined by the judgment in the case at bar, and that, therefore, it comes within the pecuniary provisions of section 233. *Smith* v. *Whitney*, 116 U. S. 167, is cited as authority. In that case we sustained our jurisdiction over a judgment of the Supreme Court of the District, dismissing a petition for a writ of prohibition to a court martial convened to try an officer for an offense punishable by dismissal from the service and consequent deprivation of salary, which, during the term of his office, would exceed the sum of $5,000. But that case is very different from this. There the direct result of an adverse judgment of the court martial was the deprivation of an office with a salary of over $5,000. That sum, therefore, was involved in the trial sought to be restrained. But no such result follows in this case.

The act of the defendant in fraudulently converting or appropriating the moneys in his possession operates to forfeit all right or claim to any commissions, etc., and this, irrespective of the question whether he is or is not convicted of any crime in respect thereto. It is true such fraudulent conversion or appropriation is declared to be embezzlement, and the defendant was prosecuted and convicted of that offense, but the forfeiture of commissions does not follow the judgment, but follows the wrongful conversion or appropriation of the moneys. The only direct pecuniary result of a conviction is a fine not exceeding $1,000, and that as a punishment for the offense. *United States* v. *More*, 3 Cranch, 159, 174. It adjudges no forfeiture of commissions. It may be that it furnishes evidence in respect to the forfeiture of commissions, but if so it is simply evidence. Nor does the criminal offense depend at all upon the amount of the appropriation. If the official fraudulently converts or appropriates $1,000 the crime is the same as though he fraudulently converts or appropriates $50,000. All that can be accomplished by the criminal prosecution is the statutory punishment for the offense, which cannot exceed a fine of $1,000, or imprisonment for ten years, or both. The conviction is conclusive as to the fact of a fraudulent conversion and appropriation but not as to the amount thereof any more than a conviction of larceny is a conclusive adjudication that the larceny was committed at a day named or of the precise amount or value of the property charged to have been stolen. Those are incidental and minor facts, which may or may not be proved exactly as stated. All that is necessary to sustain the judgment before us is that there was a fraudulent conversion or appropriation of some amount of money in the possession of the official. For these reasons the writ of error cannot be sustained.

The application for a certiorari is denied and the writ of error is

Dismissed.

Mr. Justice WHITE concurred in the judgment.

True copy.

Test:

Clerk Supreme Court, U. S.